

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

LEWIS W. JOHNSON,
Plaintiff,
v.
PATRICIA HERNANDEZ, et al.,
Defendants.

Case No. 19-cv-03936-RMI

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Re: Dkt. No. 1

Plaintiff, a state prisoner, filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed *in forma pauperis*.

DISCUSSION

Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In the course of this review, the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or those which seek monetary relief from a defendant who is immune from such relief. *See id.* at 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” While specific facts are not necessary, the statement should impart fair notice of the nature of the claim and the grounds upon which it rests. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). While it is true that a complaint “does not need

1 detailed factual allegations . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]
2 to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a
3 cause of action will not do . . . [the] [f]actual allegations must be enough to raise a right to relief
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
5 omitted). A complaint must therefore proffer "enough facts to state a claim to relief that is
6 plausible on its face." *Id.* at 570. The "plausible on its face" standard of *Twombly* has been
7 explained as such: "[w]hile legal conclusions can provide the framework of a complaint, they must
8 be supported by factual allegations. When there are well-pleaded factual allegations, a court
9 should assume their veracity and then determine whether they plausibly give rise to an entitlement
10 to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

11 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
12 that a right secured by the Constitution or laws of the United States was violated; and, (2) that the
13 alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*,
14 487 U.S. 42, 48 (1988).

15 **Legal Claims**

16 Plaintiff alleges that he tripped and fell at his prison job severely injuring himself.

17 The Constitution does not mandate comfortable prisons, but neither does it permit
18 inhumane ones. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The treatment a prisoner
19 receives in prison and the conditions under which he is confined are subject to scrutiny under the
20 Eighth Amendment. *See Helling v. McKinney*, 509 U.S. 25, 31 (1993). In its prohibition of "cruel
21 and unusual punishment," the Eighth Amendment places restraints on prison officials, who may
22 not, for example, use excessive force against prisoners. *See Hudson v. McMillian*, 503 U.S. 1, 6-7
23 (1992). The Amendment also imposes duties on these officials, who must provide all prisoners
24 with the basic necessities of life such as food, clothing, shelter, sanitation, medical care and
25 personal safety. *See Farmer*, 511 U.S. at 832. A prison official violates the Eighth Amendment
26 when two requirements are met: (1) the deprivation alleged must be, objectively, sufficiently
27 serious, *Farmer*, 511 U.S. at 834 (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and (2) the
28 prison official possesses a sufficiently culpable state of mind, *id.* (citing *Wilson*, 501 U.S. at 297).

1 Neither negligence nor gross negligence will constitute deliberate indifference. *See Farmer*
2 at 835-37 & n.4. A prison official cannot be held liable under the Eighth Amendment for denying
3 a prisoner humane conditions of confinement unless the standard for criminal recklessness is met,
4 that is, the official knows of and disregards an excessive risk to inmate health or safety. *See id.* at
5 837.

6 “In a § 1983 or a *Bivens* action – where masters do not answer for the torts of their servants
7 – the term ‘supervisory liability’ is a misnomer. Absent vicarious liability, each Government
8 official, his or her title notwithstanding, is only liable for his or her own misconduct.” *Iqbal*, 556
9 U.S. at 677 (finding under *Twombly*, 550 U.S. at 544, and Rule 8 of the Federal Rules of Civil
10 Procedure, that complainant-detainee in a *Bivens* action failed to plead sufficient facts “plausibly
11 showing” that top federal officials “purposely adopted a policy of classifying post-September-11
12 detainees as ‘of high interest’ because of their race, religion, or national origin” over more likely
13 and non-discriminatory explanations).

14 A supervisor may be liable under section 1983 upon a showing of (1) personal
15 involvement in the constitutional deprivation or (2) a sufficient causal connection between the
16 supervisor’s wrongful conduct and the constitutional violation. *Henry A. v. Willden*, 678 F.3d 991,
17 1003-04 (9th Cir. 2012). Even if a supervisory official is not directly involved in the allegedly
18 unconstitutional conduct, “[a] supervisor can be liable in this individual capacity for his own
19 culpable action or inaction in the training, supervision, or control of his subordinates; for his
20 acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous
21 indifference to the rights of others.” *Starr v. Baca*, 652 F.3d 1202, 1208 (9th Cir. 2011) (citation
22 omitted). The claim that a supervisory official “knew of unconstitutional conditions and ‘culpable
23 actions of his subordinates’ but failed to act amounts to ‘acquiescence in the unconstitutional
24 conduct of his subordinates’ and is ‘sufficient to state a claim of supervisory liability.’” *Keates v.*
25 *Koile*, 883 F.3d 1228, 1243 (9th Cir. 2018) (quoting *Starr*, 652 F.3d at 1208) (finding that
26 conclusory allegations that supervisor promulgated unconstitutional policies and procedures which
27 authorized unconstitutional conduct of subordinates do not suffice to state a claim of supervisory
28 liability).

1 Plaintiff states that while working at his job at a warehouse in the prison, he tripped over a
2 hazard and suffered a severe injury. *Compl.* (dkt. 1) at 3. Plaintiff adds that Defendants failed to
3 provide a safe work environment, and neglected to identify and repair an unspecified tripping
4 hazard. *Id.* While Plaintiff identities three Defendants on the coversheet of the Complaint, Plaintiff
5 fails to describe their individual actions or omissions in the body of the Complaint. To proceed
6 with a civil rights action, Plaintiff must identify the specific actions of each individual defendant
7 and describe how they violated his constitutional rights. If a defendant is a supervisor, Plaintiff
8 must describe that person's involvement. Plaintiff must also provide more information regarding
9 the hazard that caused him to fall. Plaintiff is also reminded that it is not enough that Defendants
10 may have been negligent; instead, Plaintiff must present allegations that demonstrate an Eighth
11 Amendment violation in that Defendants were deliberately indifferent to his safety.

12 To the extent plaintiff argues that the requirements of his job led to the injury, the Eighth
13 Amendment is implicated in prison work claims only if the prisoner has alleged that he was
14 compelled to perform ““physical labor which [was] beyond [his] strength, endanger[ed his life] or
15 health, or cause[d] undue pain.”” *Morgan v. Canady*, 465 F.3d 1041, 1045 (9th Cir. 2006) (quoting
16 *Berry v. Bunnel*, 39 F.3d 1056, 1057 (9th Cir. 1994) (*per curiam*)). Accordingly, the Complaint is
17 dismissed with leave to amend for Plaintiff to provide more information with respect to the legal
18 standard set forth above.

19 CONCLUSION

20 1. The complaint is **DISMISSED** with leave to amend in accordance with the standards
21 set forth above. The amended complaint must be filed within **twenty-eight (28) days** of the date
22 this Order is filed and must include the caption and civil case number used in this Order and the
23 words AMENDED COMPLAINT on the first page. Because an amended complaint completely
24 replaces the original complaint, Plaintiff must include in it all the claims he wishes to present. *See*
25 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material
26 from the original complaint by reference. Failure to amend within the designated time will result
27 in the dismissal of this case.

28 2. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court

1 informed of any change of address by filing a separate paper with the clerk headed "Notice of
2 Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so
3 may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
4 Procedure 41(b).

5 **IT IS SO ORDERED.**

6 Dated: October 10, 2019

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



ROBERT M. ILLMAN
United States Magistrate Judge